

United States District Court
Eastern District of Washington

FILED IN THE U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Nicole Lynn Carby

APR 08 2020

SEAN F. McAVOY, CLERK
DEPUTY
RICHLAND, WASHINGTON

(In the space above enter the full name(s) of the plaintiff(s).)

-against-

DaVita Dialysis

DaVita Healthcare Partners

4:20-CV-5059-SAB
Case No. _____
(To be filled out by Clerk's
Office only)

Jury Demand?

☐ Yes
☐ No

(In the space above enter the full name(s) of the defendant(s).
If you cannot fit the names of all of the defendants in the
space provided, please write "see attached" in the space
above and attach an additional sheet of paper with the full list
of names. The names listed in the above caption must be
identical to those contained in Section I. Do not include
addresses here.)

COMPLAINT FOR EMPLOYMENT DISCRIMINATION

NOTICE

Federal Rule of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

I. PARTIES**Plaintiff**

List your name, address and telephone number. Do the same for any additional plaintiffs named. Attach additional sheets of paper as necessary.

Plaintiff: Carby, Nicole L
 Name (Last, First, MI)
803 S. Olympia St Apt. G3
 Street Address
Benton, Kennewick WA 99336
 County, City State Zip Code
(509)212-8565 NicciCarby@yahoo.com
 Telephone Number E-mail Address (if available)

Defendant(s)

List all defendants. You should state the full name of the defendants, even if that defendant is a government agency, an organization, a corporation, or an individual. Include the address where each defendant resides or does business. Make sure that the defendant(s) listed below are identical to those contained in the caption. Attach additional sheets of paper as necessary.

Defendant 1: DaVita
 Name (Last, First)
2000 16th St
 Street Address
Arapahoe, Denver CO 80202
 County, City State Zip Code

Nature of business: Dialysis

Defendant 2: DaVita Healthcare Partners
 Name (Last, First)
2000 16th St
 Street Address
Arapahoe, Denver CO 80202
 County, City State Zip Code

Nature of business: Dialysis

II. CAUSE OF ACTION

Check only the options below that apply in your case.

This employment discrimination lawsuit is brought under:

- ☐ **Title VII of the Civil Rights Act of 1964**, as amended, 42 U.S.C. §§ 2000e, et seq., for employment discrimination on the basis of race, color, religion, sex, or national origin.
- ☐ **Age Discrimination in Employment Act of 1967**, as amended, 29 U.S.C. §§ 621, et seq., for employment discrimination on the basis of age. My year of birth is: _____.
- ☐ **Rehabilitation Act of 1973**, as amended, 29 U.S.C. §§ 701, et seq., for employment discrimination on the basis of a disability by an employer which constitutes a program or activity receiving federal financial assistance.
- ☐ **Americans with Disabilities Act of 1990**, as amended, 42 U.S.C. §§ 12101, et seq., for employment discrimination on the basis of a disability.

☒ My right to suit lists title VII. However, it is for the Americans with Disabilities Act

This Court has subject matter jurisdiction over this case under the above-listed statutes and under 28 U.S.C. §§ 1331 and 1343.

III. STATEMENT OF CLAIM

The conduct complained of in this lawsuit involves (*check only those that apply*):

| CLAIM | DATE(S) OF OCCURRENCE | PLACE OF OCCURRENCE |
|--|----------------------------|-----------------------|
| <input type="checkbox"/> failure to hire me | | |
| <input checked="" type="checkbox"/> termination of my employment | May 20, 2019 | Zillah, Washington |
| <input type="checkbox"/> failure to promote me | | |
| <input checked="" type="checkbox"/> failure to accommodate my disability | First noted after 04/15/18 | Kennewick, Washington |
| <input checked="" type="checkbox"/> terms and conditions of my employment differ from those of similar employees | First noted after 04/15/18 | Kennewick, Washington |

| | | |
|--|--|-----------------------|
| <input checked="" type="checkbox"/> retaliation | Verbally after 04/15/18. Put in writing 03/21/19 | Kennewick, Washington |
| <input checked="" type="checkbox"/> harassment | Started in November of 2017 | Hermiston Oregon |
| <input type="checkbox"/> other (<i>specify below</i>): | | |

The conduct of Defendant(s) was discriminatory because it was based on (check only those that apply):

- ☐ race ☐ religion ☐ national origin ☐ age (year of birth: _____)
☐ color ☐ sex ☒ disability

Facts

State here briefly the specific facts that support your claim:

My daughter was in a car accident on 04/15/18. She has been deemed disabled. After her accident I needed to provide extra care for her. I had expressed through conversations as well as FMLA documents what was needed regarding her care. Due to the nature of what my role was with the company they did not adjust my work to reflect the time off I needed. It just kept piling up. Due to the undue stress of them not accommodating my request, that was discussed and put in FMLA form I then incurred an on the job injury on 11/30/18. At that time, it was discussed and also put in writing the need for accommodation related to myself. As this was impacting both my physical and mental health my Primary Care Provider started documenting these issues. I then started utilizing FMLA documents to help assist with them not accommodating my needs.

IV. ADMINISTRATIVE PROCEDURES

Did you file a charge of discrimination against defendant(s) with the EEOC or any other federal or state agency?

- ☒ Yes (*You must attach a copy of the charge to this complaint.*)
☐ No

Have you received a Notice of Right to Sue from the EEOC?

- ☒ Yes (*You must attach a copy of the Notice of the Right to Sue.*)

☐ No

V. RELIEF

The relief I want the court to order is (*check only those that apply*):

- ☐ Direct the defendant to hire the plaintiff
- ☐ Direct the defendant to re-employ the plaintiff
- ☐ Direct the defendant to promote the plaintiff.
- ☐ Direct the defendant to reasonably accommodate the plaintiff's religion
- ☐ Direct the defendant to reasonably accommodate the plaintiff's disabilities
- ☒ Direct the defendant to (*specify*):

Acknowledge they broke several laws that resulted in my on the job injury that has left me unable to work at the level I use too. With that comes financial compensation that allows me to live the rest of my life and also assists me in taking care of my two minor children.

VI. CLOSING

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending or modifying existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

April 2, 2020

Dated



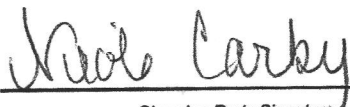
Plaintiff's Signature

Carby, Nicole, L

Printed Name (Last, First, MI)

List the same information for any additional plaintiffs named. Attach additional sheets of paper as necessary.

EEOC Form 5 (11/09)

| | | | |
|---|--|--|--|
| CHARGE OF DISCRIMINATION <small>This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.</small> | | Charge Presented To: Agency(ies) Charge No(s): <input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC 551-2019-02490 | |
| Washington State Human Rights Commission and EEOC <small>State or local Agency, if any</small> | | | |
| Name (indicate Mr., Ms., Mrs.) Nicole Carby | | Home Phone (Incl. Area Code) (509) 212-8565 | Date of Birth 1977 |
| Street Address 803 S. Olympia St, Apt G3, Kennewick, WA 99336 | | | |
| City, State and ZIP Code | | | |
| Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.) | | | |
| Name DAVITA DIALYSIS | | No. Employees, Members 500 or More | Phone No. (Include Area Code) (720) 631-2100 |
| Street Address 3208 W 19th Ave, Suite 101, Kennewick, WA 99336 | | City, State and ZIP Code | |
| Name | | No. Employees, Members | Phone No. (Include Area Code) |
| Street Address | | City, State and ZIP Code | |
| DISCRIMINATION BASED ON (Check appropriate box(es).) <input type="checkbox"/> RACE <input type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN <input checked="" type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input checked="" type="checkbox"/> DISABILITY <input type="checkbox"/> GENETIC INFORMATION <input type="checkbox"/> OTHER (Specify) | | DATE(S) DISCRIMINATION TOOK PLACE Earliest Latest 11-30-2018 05-20-2019 <input type="checkbox"/> CONTINUING ACTION | |
| THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)): On or around October 27, 2014, I began working for the Respondent as an Insurance Counselor. During the course of my employment, I performed my job duties in a satisfactory manner. On or around November 2018, I notified Respondent of my Disability and the need for a reasonable accommodation. I specifically requested that I have a reduce work schedule. Respondent granted my reasonable accommodation but failed to reduce my workload to reflect my reduced work schedule. On or around November 30, 2018, I complained to Gaberial Kvamme, Group Insurance Counselor, my workload was not being reduced to reflect the hours I am currently working. In addition, I contacted Kelly Colb, Human Resources, as I was being counseled on my performance. In or around December 2018, I was placed on a final warning by Gaberial Kvamme. On or around March 15, 2019, I requested again for a reduce workload to correctly reflect the hours being worked. On March 15, 2019, I was denied my pay raise and bonus and told my accommodations of a reduced workload would not be accommodated by Jamie Zacher. On or around | | | |
| I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures. I declare under penalty of perjury that the above is true and correct. | | NOTARY – When necessary for State and Local Agency Requirements I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLAINANT SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year) | |
| Date 7/9/19 | | Charging Party Signature  | |

Fax to (206) 220-6911

EEOC Form 5 (11/09)

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To:

Agency(ies) Charge No(s):

☐

FEPA

☒

EEOC

551-2019-02490**Washington State Human Rights Commission**

and EEOC

State or local Agency, if any

May 20, 2019, I was discharge by Rebecca Erks, Insurance Management Team Manager, due to poor performance.

I believe that I was discriminated against because of my disability and retaliated, in violation of the Americans with Disabilities Act of 1990, as amended.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

7/9/19

Date

N. Scott Carby

Charging Party Signature

NOTARY – When necessary for State and Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)

EEOC Form 161 (11/16)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: **Nicole Carby**
803 S. Olympia St, Apt G3
Kennewick, WA 99336

From: **Seattle Field Office**
909 First Avenue
Suite 400
Seattle, WA 98104-1061



On behalf of person(s) aggrieved whose identity is
 CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

551-2019-02490

Annalie N. Greer,
Enforcement Supervisor

(206) 220-6917

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:



The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.



Your allegations did not involve a disability as defined by the Americans With Disabilities Act.



The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.



Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge



The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.



The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.



Other (briefly state)

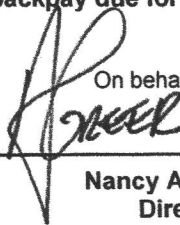
- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed **WITHIN 90 DAYS** of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission



for

Nancy A. Sienko,
Director

January 13, 2020

(Date Mailed)

Enclosures(s)

cc:

Davita Dialysis
Attn: Grace Garcia, Paralegal
601 Hawaii Street
El Segundo, CA 90245